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8 UNITED STATES BANKRUPTCY COURT
9
10 IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

11 In re:

No.: **09-01804-PCW11**

12 **GARY ANDREW & CHRISTINE IDA**
13 **SIMONSEN, f/d/b/a HOLY THREADS, f/d/b/a**
14 **ADVANCED ORTHOPEDICS INLAND,**

Chapter 11

FINDINGS OF FACT

Debtor.

15 **THIS MATTER** coming before the Court upon the issues raised by Debtors' request for
16 confirmation of Debtors' Plan of Reorganization ("Plan") and based upon the evidence produced,
17 the Court now makes the following:

18 **FINDINGS OF FACT**

19 1. Debtors' Plan of Reorganization was filed herein on September 2, 2009 which was
20 submitted to Creditors and other parties in interest;

21 2. The Plan has been accepted in writing by the creditors and equity security holders
22 whose acceptance is required by law; and

23 3. The provisions of Chapter 11 of the United States Code have been complied with
24 and the Plan has been proposed in good faith and not by any means forbidden by law; and

25 Findings of Fact-1

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1 4. (a) Each holder of a claim or interest has accepted the Plan or will receive or retain
2 under the Plan property of a value, as of the effective date of the Plan, that is not less than the
3 amount that such holder would receive or retain if the Debtors was liquidated under Chapter 7 of
4 the Code on such date, or (b) the Plan does not discriminate unfairly, and is fair and equitable with
5 respect to each class of claims or interests that is impaired under, and has not accepted the Plan;
6 and

7 5. All payments made or promised by the Debtors or by a person issuing securities or
8 acquiring property under the Plan or by any other person for services or for costs and expenses in,
9 or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and
10 are reasonable and are hereby approved, or, if to be fixed after confirmation of the Plan, will be
11 subject to approval of the Court; and

12 6. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for
13 further financial reorganization of the Debtors, or (b) if the Plan is a plan of liquidation, the Plan sets
14 a time period in which liquidation will be accomplished, and provides for the eventuality that the
15 liquidation is not accomplished in that time period; and

16 7. Pursuant to the Plan, the following acts or events constitute substantial
17 consummation of the Plan: sixty (60) days following Confirmation, provided that Debtors has paid
18 all installments provided by this Plan to be paid within that time.

19 8. Creditors were given Notice of Confirmation and no objections thereto were made,
20 or if made, have been resolved.

21 9. It is proper that Debtors' Plan be confirmed, subject to the following:

22
23 a. Notwithstanding any provision of the Plan to the contrary, at any
24 time prior to a sale by public auction, the Debtors shall be permitted to elect
25

Findings of Fact-2

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1 ("election") to retain Debtors' 131 acres (Art. I, def. #26) or any part thereof
2 ("property elected"); provided, however, that if the Allowed Claims (Art. I, def #4)
3 of Classes 1, 2, or 14 are not paid in full at the time of the election, then the Court
4 shall fix the amount to be paid by Debtors, and the terms and conditions of
5 payment, as are noticed to creditors (after notice and hearing) (Art. I, def. #3),
6 provided, further however, that if any unpaid balance(s) remain due on the
7 note(s) securing the claim of the Blands against the property elected, at the time
8 the election is made by the Debtors, the Debtors must bring any delinquent real
9 property taxes current on the property elected, the Debtors must bring current
10 any arrearages on the note(s) securing the claim of the Blands against the
11 property elected, including any unpaid attorney's fees and costs required to be
12 paid as set forth in the note(s) and deed of trust securing the claim of the Blands
13 (the "collateral documents"), and the balance(s) of the note(s) securing the claim
14 of the Blands against the property elected shall be paid in accordance with the
15 collateral documents;

16 b. Notwithstanding any provision of the Plan to the contrary, any capital gain
17 taxes created by the sale of any property or post-petition taxes owed by the Estate due the
18 United States of America, Internal Revenue Service shall be paid as a Class 1 claim. Any
19 taxes accruing post-petition by the Debtors or the Estate due the United States of America,
20 Internal Revenue Service shall be timely paid, and all post-petition tax returns due by the
21 Debtors or the Estate to the United States of America, Internal Revenue Service shall be
22 timely filed. The Debtor or the Estate will provide updates of any sales that have occurred
23 and the associated tax consequences with its timely quarterly estimates, and all tax
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Findings of Fact-3

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1 returns to the Insolvency Section, IRS, 920 W. Riverside, Room 440, MS 791-S, Spokane
2 WA 99201. ;

3 c. The real properties to be sold under the Plan shall be sold no later than
4 March 31, 2011. If not sold by that date, the same shall be sold by public auction, which
5 shall occur no later than May 31, 2011. Robert and Beatrice Blands ("Blands") may credit
6 bid their claim on the real property that is subject to their secured claim in the event that
7 specific real property is sold by auction; provided, however, all real property sold by auction
8 will not be sold for less than a reserve set at eighty percent (80%) of the fair market value of
9 the real property as determined and fixed by Debtors' Realtor Suzy Dix, along with a
10 determination of property size, at the time of the public auction. If the real property is not
11 sold for the reserve at public auction, then in that event, the Court shall fix the date, terms
12 and notice requirements of the subsequent auction;

13 d. If the real property subject to the secured claim of Blands is sold by
14 installment payments, the down payment shall be the greater of 20% of the sales price,
15 or a sufficient amount to pay all costs relating to the sale, cure all defaults to bring the
16 note(s), including any unpaid attorney's fees and costs required to be paid as set forth in
17 the collateral documents, owing to the Blands secured by the real property sold current,
18 and to pay in full all liens against the property superior to those of Blands. If the real
19 property sold that is subject to the secured claim of the Blands is sold by installment
20 payments, the monthly installments shall be sufficient to pay the monthly contract
21 amounts to Blands, plus a sufficient amount to establish a reserve for payment of real
22 property taxes accruing against the real property subject to the secured claim of the
23 Blands. So long as liens superior to those of Blands remain outstanding against the
24 property, proceeds from the sale of any real properties shall be paid to discharge all
25

Findings of Fact-4

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1 liens against the properties superior to those of Blands before those proceeds are paid
2 to the Debtors. So long as any defaults in payment of the amounts due the Blands under
3 the note(s) are not cured, proceeds from the sales of any real properties shall be applied
4 to the note(s), including any unpaid attorney's fees and costs required to be paid as set
5 forth in the collateral documents, owing the Blands to cure those defaults before any of
6 the proceeds are paid to the Debtors.

7 e. Commencing November 15, 2009 and each 15th day of each succeeding month
8 thereafter, Debtors shall pay Blands the regular monthly installments due Blands until paid
9 in full. Except as specifically modified herein, Debtors shall comply with all provisions of the
10 notes and deeds of trust between them and the Blands, and the Blands may exercise their
11 state law remedies in the event of any default occurring on or after November 15, 2009, if
12 the Blands have given the Debtors a ten (10) day written notice of default and the Debtors
13 have failed to cure the default.

14 f. Notwithstanding any provision of the Plan to the contrary, the amount of the
15 allowed secured claim of Midland Loan Services, Inc., as master and special servicer for
16 Wells Fargo Bank N.A., as trustee for the registered holders of CBA Commercial Assets,
17 Small Balance Commercial Mortgage Pass-Through Certificates, Series 2005-1, as
18 assignee of New Century Mortgage Corporation, is \$252,527.18, as of August 19, 2009.

19 g. Commencing January 15, 2010 and each 15th day of each succeeding month
20 thereafter, Debtors shall pay Chase the regular monthly installments due Chase until paid
21 in full. Except as specifically modified herein, Debtors shall comply with all provisions of the
22 notes and deeds of trust between them and Chase, and the Chase may exercise their state
23 law remedies in the event of any default occurring on or after January 15, 2010, if Chase
24 has given the Debtors a ten (10) day written notice of default and the Debtors have failed to
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Findings of Fact-5


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1 cure the default. Any arrearage(s) owed Chase by Debtors up to January 15, 2010 shall be
2 cured at time the real property securing the secured claim(s) of Chase is sold.

3 PRESENTED BY:

4 SOUTHWELL & O'ROURKE, P.S.

5
6 BY: s/ Kevin O'Rourke
7 KEVIN O'ROURKE, WSBA #28912
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Patricia C. Williams
Bankruptcy Judge

Findings of Fact-6

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